REMARKS

At the time of the Office Action dated September 8, 2005, claims 1-16 were pending and rejected in this application.

CLAIMS 1, 5, 9, AND 13 ARE REJECTED UNDER 35 U.S.C. § 102 FOR ANTICIPATION BASED UPON SCHUBA ET AL., U.S. PATENT NO. 6,725,378 (HEREINAFTER SCHUBA)

On pages 3 and 4 of the Office Action, the Examiner asserted that Schuba discloses a method, apparatus, storage media, and carrier corresponding to that claimed. This rejection is respectfully traversed.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure of each element of a claimed invention in a single reference. As part of this analysis, the Examiner must (a) identify the elements of the claims, (b) determine the meaning of the elements in light of the specification and prosecution history, and (c) identify corresponding elements disclosed in the allegedly anticipating reference. That burden has not been discharged. Moreover, the Examiner neither clearly designated the teachings in Schuba being relied upon nor clearly explained the pertinence of Schuba. In this regard, the Examiner's rejection under 35 U.S.C. § 102 also fails to comply with 37 C.F.R. § 1.104(c).[1]

[1] 37 C.F.R. § 1.104(c) provides:

> In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

Independent claim 1 recites, in part, the following limitation:

> determining, in response to a request from a host for a connection to a port number on the server, if the number of connections to the port assigned to the host exceeds a prescribed threshold.

On page 3 of the Office Action, the Examiner asserted that this limitation is disclosed within column 4, lines 53-67 of Schuba, which, for ease of reference, is reproduced below:

> When a SYN packet arrives at a port on which a TCP server is listening, the above-mentioned data structures are allocated. There is a limit on the number of concurrent TCP connections that can be in a half-open connection state, called the SYN-RECVD state (i.e., SYN received). When the maximum number of half-open connections per port is reached, TCP discards all new incoming connection requests until it has either cleared or completed some of the half-open connections. Typically, several ports can be flooded in this manner, resulting in degraded service or worse. Moreover, it should be appreciated that without a limit on the number of half-open connections, a different denial of service attack would result in which an attacker could request so many connections that the target machine's memory is completely exhausted by allocating data structures for half-open TCP connections.

As noted above, the Examiner has failed to identify the elements of claim 1. For example, with regard to the above-reproduced limitation, if the Examiner had identified elements within this limitation, the Examiner would have determined that the elements within this limitation at least include:

(i) a recognition of a particular host connecting to a port number on the server,

(ii) a determination of the number of connections assigned to the particular host, and

(iii) a comparison of the number of connections assigned to the particular host with a prescribed threshold.

In this regard, the Examiner is also invited to review page 3, lines 2-7 of Applicants' disclosure.

Comparing the elements listed above found in claim 1 with the disclosure found in column 4, lines 53-67 of Schuba, Applicants note the following deficiencies.

Schuba fails to identically disclose the recognition of a particular host connecting to the server. Instead, Schuba is indifferent as to the particular hosts connecting to the server and is only concerned about "the number of half-open connections per port."

Schuba fails to identically disclose a recognition of a number of connections assigned to the particular host. It is axiomatic that Schuba is not concerned with the number of connections assigned to a particular host since Schuba is not concerned about recognizing a particular host connected to the server.

Schuba fails to identically disclose a comparison of the number of connections assigned to the particular host with a prescribed threshold. Since Schuba does not recognize the number of connections assigned to a particular host, Schuba cannot compare the number of connections to a prescribed threshold.

The above argued differences between the method defined in independent claim 1 and the methodology of Schuba undermine the factual determination that Schuba identically describes the claimed invention within the meaning of 35 U.S.C. § 102. Independent claims 5, 9, and 13 include

similar limitations to those found in claim 1, which Applicants have argued are not identically disclosed by Schuba. Applicants, therefore, respectfully submit that the imposed rejection of claims 1, 5, 9, and 13 under 35 U.S.C. § 102 for anticipation based upon Schuba is not factually viable and, hence, solicit withdrawal thereof.

CLAIMS 2-3, 6-7, 10-11, AND 14-15 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON SCHUBA

On pages 4-7 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify the methodology of Schuba to arrive at the claimed invention. This rejection is respectfully traversed.

Claim 2 recites, in part, the following limitation:

> overriding the denial and allowing the request if a quality of service parameter pertaining to the requesting host permits the override.

Two of the limitations introduced by claim 2 are that of a "quality of service parameter" and that the quality of service parameter pertains to the requesting host. On pages 4-6 of the Office Action, the Examiner puts forth an argument that the "timer" disclosed by Schuba is comparable to the claimed quality of service parameter.

Notwithstanding the validity of this assertion, Applicants note that the Examiner assertion fails to address that the claimed limitation recites that the quality of service parameter pertains to the requesting host. There is no disclosure (nor any suggestion) within Schuba that the timer

(i.e., the Examiner's asserted quality of service parameter) has any relation to the particular host that is requesting a connection to the server. Therefore, even if one having ordinary skill in the art would have recognized that the timer of Schuba is comparable to a quality of service parameter, the claimed invention would not result because Schuba fails to teach or suggest that the quality of service parameter pertains to the requesting host.

Applicants, therefore, respectfully submit that the imposed rejection of claim 2 under 35 U.S.C. § 103 for obviousness based upon Schuba is not viable and, hence, solicit withdrawal thereof. Claims 6, 10, and 14 include similar limitations to those found in claim 2, which Applicants have argued are not taught or suggested by Schuba. Applicants, therefore, respectfully solicit withdrawal of the imposed rejection of claims 2-3, 6-7, 10-11, and 14-15 under 35 U.S.C. § 103 for obviousness based upon Schuba.

CLAIMS 4, 8, 12, AND 16 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON SCHUBA IN VIEW OF CHEBROLU, U.S. PATENT NO. 6,754,714

On pages 7 and 8 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify the methodology of Schuba in view of Chebrolu to arrive at the claimed invention. This rejection is respectfully traversed.

Claims 4, 8, 12, and 16 respectively depend ultimately from independent claims 1, 5, 9, and 13, and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1, 5, 9, and 13 under 35 U.S.C. § 102 for anticipation based upon Schuba. The

secondary reference to Chebrolu does not cure the argued deficiencies of Schuba. Accordingly, the proposed combination of references would not yield the claimed invention. Applicants, therefore, respectfully submits that the imposed rejection of claims 4, 8, 12, and 16 under 35 U.S.C. § 103 for obviousness based upon Schuba in view of Chebrolu is not viable and, hence, solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: September 22, 2005

Respectfully submitted,

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